



March 26, 2010

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**Subject: Empowering Parents and Protecting Children in an Evolving Media Landscape; MB Docket No. 09-194; FCC 09-94  
Rebuttal Comment**

Filed online at <http://www.fcc.gov/cgb/ecfs>

Dear Ms. Dortch:

The Council of Better Business Bureau (BBB), through its Children's Food and Beverage Advertising Initiative (CFBAI or Initiative), is filing this rebuttal comment to respond to comments filed in the FCC's Notice of Inquiry (NOI), "Empowering Parents and Protecting Children in an Evolving Media Landscape," 74 FR 61308 (Nov. 24, 2009).<sup>1</sup> Several comments address the CFBAI and suggest that under self regulation little progress has been made in improving the nutritional profile of foods in advertising primarily directed to children under 12 (hereafter "child-directed advertising"). Although we always welcome feedback and appreciate the sincere intentions of advocacy groups and academics, we respectfully disagree with their contentions.

Under self regulation there have been significant changes, which can be objectively measured, in the landscape of children's advertising. First, although it is not our goal to reduce the amount of child-directed food advertising, but rather to improve it, notably three participants now no longer engage in such advertising, and another is continuing its long-term policy of not advertising to children.<sup>2</sup> Second, the other 12

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<sup>1</sup> The CFBAI filed a comment on Feb. 24, 2010 ("CFBAI Comment"), during the initial comment period.

<sup>2</sup> The participants that do not engage in child-directed advertising are Cadbury Adams USA LLC, The Coca Cola Co., Hershey Co., and Mars Snackfoods US, LLC. In addition, Nestlé USA no longer advertises its

***Council of Better Business Bureaus, Inc.***

4200 Wilson Boulevard, Suite 800 • Arlington, Virginia 22203 • Phone: 703.276.0100 • Fax:  
703.525.8277

CFBAI participants now use solid, familiar nutrition standards to govern what products appear in their child-directed food advertising. These standards have resulted in significant improvements in foods advertised to children. Specifically, more than 100 individual foods, entrees and kid's meals have been reformulated or newly created to meet participants' nutrition standards.

To ensure that the Commission has an accurate record in its proceeding, in this comment we provide: 1) brief comments and observations on studies and reports cited by other commenters; 2) an overview of the nutritional quality of participants' child-directed food advertising, including concrete examples of the changes since the creation of the CFBAI, and the results of an informal "snapshot" of the nutritional profile of foods featured in this advertising;<sup>3</sup> and 3) a discussion regarding the benefits of public service announcements and media literacy campaigns.

## **I. Introduction**

As a preliminary matter, data relied on or cited by a few commenters often is based on out-of-date data or analyses using a variety of standards, each different from or inconsistent with the others, that do not capture the significant changes in existing products or new products in CFBAI participants' child-directed advertising.<sup>4</sup> It is not our intent, however, to engage in a point-by-point refutation of every report with unfavorable comments or conclusions. We agree that our work is not done and we continue to work with our participants to strengthen self regulation as the program always has been intended to be a dynamic one that could evolve over time. At the same time, it is important for regulators and policy makers not to draw erroneous conclusions from flawed analyses or data that is no longer relevant, and to understand that self regulation *is* working. The CFBAI is accomplishing its goal of shifting the mix of foods in child-directed advertising, as the Institute of Medicine recommended, to include foods with fewer calories, and that are lower in fats, sodium and sugars and more nutrient dense.<sup>5</sup>

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Wonka brand (or other confections) to children. It may advertise other products that meet its nutrition standards, such as 100% fruit juice.

<sup>3</sup> Because our initial comment discussed the broad range of media covered by the program and recent program enhancements we do not repeat that information here. See CFBAI Comment at 5-13.

<sup>4</sup> Although most comments did not discuss the CFBAI or address advertising and childhood obesity, the comments of the Food Marketing to Children Workgroup ("FMC Comment") and the Rudd Center ("Rudd Center Comment") did address the effectiveness of the CFBAI and thus our rebuttal comment focuses on information these two groups provided.

<sup>5</sup> Institute of Medicine, *Food Marketing to Children and Youth, Threat or Opportunity?* (2006) at 382 ("Food Marketing to Children").

First, many citations in the relevant comments refer to studies that pre-date the creation of the CFBAI and implementation of participants' pledges.<sup>6</sup> This research does not accurately reflect participants' current advertising practices or the foods currently advertised.<sup>7</sup> Second, studies that are critical of the Initiative often use inconsistent standards and broad, simplistic food categories to analyze participants' foods. These standards often produce conflicting results and do not capture the significant changes that have occurred.

A recent report cited in several comments illustrates the difficulties posed by food rating systems. The December 2009 Children Now study examined the nutritional quality of products advertised to children on TV using the "Go, Slow, Whoa" food categories developed by the U.S. Department of Health and Human Services.<sup>8</sup> This study placed most foods advertised to kids in the "Whoa" category, which it describes as foods that are high in calories and low in nutrients and that should be eaten only on "special occasions." Although these broad categories may be helpful to consumers in constructing a more healthy diet over the course of a week, they do not work well to assess the changes that have occurred in food advertising to kids. In addition, these categories sometimes produce results that conflict with other private and government standards or recommendations. Below we describe several

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<sup>6</sup> The CFBAI's program principles were announced in November 2006. The program was formally launched with the announcement of the specific commitments being made by the then 11 participants at a joint Federal Trade Commission and Department of Health and Human Services' forum, "Weighing In: A Check-Up on Marketing, Self-Regulation, and Childhood Obesity" in July 2007. At that time, the Initiative was widely lauded by health groups, advocacy groups, members of Congress, FTC commissioners and others. For example, then FCC Commissioner Deborah Taylor Tate congratulated Initiative participants on taking "an admirable step in the right direction" with their pledges, which made extensive and rigorous commitments for their child-directed advertising. The participants' pledges generally were implemented between July 2007 and June 2009. The participants have not only done what they pledged to do then, but more.

<sup>7</sup> For example, we note that FMC Workgroup Comment at notes 13, 15, 16 and 17 cite pre-CFBAI advertising studies to demonstrate the purported poor nutritional quality of foods advertised to children now. See note 13, citing IOM's *Food Marketing to Children* (2006); note 15, citing the FTC's 2008 Food Marketing Report (analyzing data from 2006); note 16, citing Batada, Seitz *et al.*, "Nine out of 10 food advertisements shown during Saturday morning children's television programming are for foods high in fat, sodium or added sugars, or low in nutrients," J. of the American Dietetic Ass'n 2008 (analyzing food ads from 2005); and note 17, citing Harrison and Marske, "Nutritional content of foods advertising during the television programs children watch most," American J. of Public Health (2005). Similarly, the FMC Comment's critique of digital marketing relies on pre-CFBAI data, although the publication dates of the studies referred to would seem to indicate they refer to more recent data. FMC Workgroup Comment at 8, notes 39 (citing Lee, Yoonhyeung *et al.*, "Playing with Food: Content Analysis of Food Advergaming, 43 J. of Consumer Affairs 2009 (based on 2006 data) and 40 (citing Alvy and Calvert, "Food marketing on popular children's web sites: A content analysis," 108 J. of the American Dietetic Ass'n (2009) (based on 2005 data). The Rudd Center Comment also relies on many pre-CFBAI studies. See, e.g., Rudd Center Comment, note 1, citing Powell, Saczpka *et al.*, "Exposure to Food Advertising on Television Among US Children," (2007) (based on 2003-2004 ads); note 2, citing a 2007 study; note 3, citing a 2009 article that does not conduct data analysis; note 4, citing a 2007 study (based on 2004 and 2005 ads); note 6 (relying on 2005 Canadian supermarket data); and notes 13-20 (citing 2002-2007, pre-CFBAI studies).

<sup>8</sup> See Kunkel, McKinley, Wright "The Impact of Industry Self-Regulation on the Nutritional Quality of Foods Advertised on Television to Children" ("Children Now Study") (Dec. 2009).

examples of how foods considered healthy and nutritious by government and other respected parties are inconsistently considered Slow or Whoa foods.

In the Children Now study, 100% fruit juice is listed in the “Slow” or “sometimes” category, yet others consider it a nutritious product that can be part of the daily diet. For example, the IOM Committee on Competitive Foods in its April 2007 report put 100% fruit juice (in 4 oz servings for elementary and middle school children) in its Tier 1 category of foods – that is, products that contain food groups to be encouraged.<sup>9</sup> In addition, the Interagency Working Group (IWG) tentative proposed standards announced by the FTC, FDA, USDA and the CDC in December 2009 placed 100% fruit juices in its “Standard I” category, as a food that is “part of a healthful diet and may be marketed to children” without meeting other qualifying standards. The Center for Science in the Public Interest’s (CSPI) November 2009 analysis of food ads also included 100% fruit juices in the category of beverages that met its own standards.<sup>10</sup> All of these examples illustrate the complexity of nutrition science and the difficulty of categorizing specific foods as “good” or “bad.”

The Children Now study’s categorization of cereals is also troubling. Sweetened cereals, generally consumed with milk, are in the “Whoa” category, regardless of their particular sugar content or the fact that cereals are not high in calories<sup>11</sup> and contain many essential vitamins and minerals. Inexplicably, French toast, waffles and pancakes, traditionally eaten with butter and syrup, are in the “Slow” or “sometimes” category. Even if eaten plain, French toast and pancakes, while perhaps lower in sugar than most kids’ cereals, are generally higher in calories, fat and sodium. These breakfast foods also may have lower nutrient density than a serving of cereal.<sup>12</sup>

Further, putting all sweetened cereals into the “Whoa” category ignores other third-party recommendations that include a standard of no more than 35% sugars by weight — a standard that a number of CFBAI cereals meet.<sup>13</sup> And, even Frosted Mini

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<sup>9</sup> See <http://www.iom.edu/~media/Files/Report%20Files/2007/Nutrition-Standards-for-Foods-in-Schools-Leading-the-Way-toward-Healthier-Youth/FoodinSchools.ashx>.

<sup>10</sup> “Better-For-Who? Revisiting Company Promises on Food Marketing to Children,” CSPI (Nov. 2009) at 5.

<sup>11</sup> CFBAI cereals generally have less than 175 calories per serving.

<sup>12</sup> Independent research has consistently shown that frequent cereal eaters have healthier body weights than those who don’t eat cereal — both kids and adults. They also get more needed nutrients, and eat less fat, cholesterol, and sodium than those who don’t eat cereal.

<sup>13</sup> This standard is used by the Alliance for a Healthier Generation, CSPI and others. We note, however, that CSPI has used two different sugar standards in judging the sugar content of cereals. In June 2007, CSPI announced it had negotiated a settlement with Kellogg’s that included a 12 gram sugar guideline,

Wheats, which is an excellent source of fiber and contains 49 grams of whole grains, would be in the “Whoa” category because it has 12 grams of sugar per serving.<sup>14</sup> Yet, it received a “healthy nutrition rating” under another rating system.”<sup>15</sup>

These examples show that, for assessing change, the “Go, Slow, Whoa” categories are too simplistic and do not adequately assess the significant changes in food advertising to kids under the CFBAI.<sup>16</sup>

## **II. The nutritional quality of foods advertised to children under the CFBAI**

As we noted in our initial comment, the commitments and practices of the CFBAI and its participants are changing the landscape of food advertising. Although one comment contended that there has been little substantive change “in the volume and nutritional quality of food and beverage products advertised to children,”<sup>17</sup> the facts show otherwise. For example, the reduction in the volume of food advertising to children in recent years has been well-documented by the FTC and others.<sup>18</sup> Below

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which it lauded as “historic” and as a “rising tide that could lift all boats.” But, when it evaluated the sugar content of cereals and other products in its “Better-For-Who” 2009 report, it used a 35% added sugars by weight standard, not the 12 gram (added) sugar per serving standard that it had negotiated with Kellogg’s. Some other companies also used a limit of 12 grams of sugar per serving in their standards that were the basis of their reformulation efforts. Accordingly, a number of products that contain 12 grams or less of added sugars did not meet CSPI’s 35% added sugars by weight standard. In a subsequent report, CSPI contended that major cereal companies have “weak” added sugar criteria even though they may be using the one that CSPI negotiated with Kellogg’s in 2007. See CSPI, “Food Report Card on Food Marketing Policies” (March 2009) at 18. The important point, however, is that the sugar content of cereals is being reduced significantly through the use of nutrition standards and there will be further improvements over time.

<sup>14</sup> Another cereal, Cheerios, with whole grains and many vitamins and minerals, also seemingly would be on the “Whoa” list because it lists one gram of sugar on the Nutrition Facts Panel and lists sugar as its third ingredient, making it “pre-sweetened” according to the study’s author.

<sup>15</sup> Harris, Schwartz, Brownell *et al.*, “Cereal Facts: Evaluating the Nutrition Quality and Marketing of Children’s Cereals” (“Cereal Facts”) (Nov. 2009) at 30. See *also* section II. A.3 below for more information about the nutritional profile of participant-advertised cereals.

<sup>16</sup> See *also* Section II.A.I below for a description of how fruit and low-fat dairy products included in kids meal advertising are overlooked in the Children Now Study.

<sup>17</sup> Rudd Center Comment at 1.

<sup>18</sup> As noted, although it is not our goal to reduce food advertising to children, but to change it, we believe it is important for policy makers to be aware of the extensive empirical evidence showing that food advertising to children has declined. A FTC Report found that the amount of food and beverage ads children are exposed to declined significantly between 1977 and 2004, as did the amount of child-directed food and beverage ads. See FTC’s Report, “Children’s Exposure to TV Advertising in 1977 and 2004” (June 1, 2007), available at <http://www.ftc.gov/os/2007/06/cabebw.pdf>. More recent data confirm this trend and show further declines from 2004 to 2008. Specifically, a recent Georgetown Economic Services study cited by the Grocery Manufacturer’s Association noted ads for food, beverages and restaurants during children’s programming fell by 31% between 2004 and 2008, with ads for snacks falling by 60% and ads for cookies declining by 82%. “GMA: More than Two-Thirds of the Advertisements Seen by Children and Teens Today Promote More Nutritious Foods and Healthy Lifestyles” (March 9, 2010), press release available at [www.gmaonline.org/news](http://www.gmaonline.org/news). The GMA data was presented at the FTC Forum “Sizing Up Food Marketing and Childhood Obesity” (Dec. 15, 2009), available at <http://ftc.gov/bcp/workshops/sizingup/presentations/Sophpos.pdf>.

we summarize the changes in the nutritional quality of foods in participants' child-directed advertising.

**A. The landscape of food and beverage advertising to children has changed**

Prior to the creation of the CFBAI, few companies had articulated standards or comprehensive standards for child-directed food advertising.<sup>19</sup> Under the CFBAI, familiar, recognizable nutrition standards now govern what products appear in participants' child-directed advertising. Most participants' standards are based on the familiar 35-10-35 rubric (i.e.,  $\leq 35\%$  calories from fat,  $\leq 10\%$  calories from saturated fat,  $\leq 35\%$  of calories from sugar or  $\leq 35\%$  sugar by weight). No individual foods under the program exceed 200 calories, no entrees exceed 350 calories and no meals exceed 600 calories. In addition, three candy companies no longer advertise to children under 12 at all, and another participant is continuing its longstanding commitment to not advertise to this audience.

Below, to illustrate some of the more than 100 product reformulations and innovations, we provide some visual examples.

*1. Changes in quick-serve restaurant advertising*

In addition to leading food and beverage package good companies, CFBAI includes two quick-serve restaurant companies: Burger King Corporation (BKC) and McDonald's. The changes in their pre-CFBAI and CFBAI advertised meals are quite striking, as Figures 1-3 illustrate.

BKC's pre-CFBAI 2004 advertised Kids Meal included a double cheeseburger, French fries, soft drink and a toy, as seen in Figure 1.

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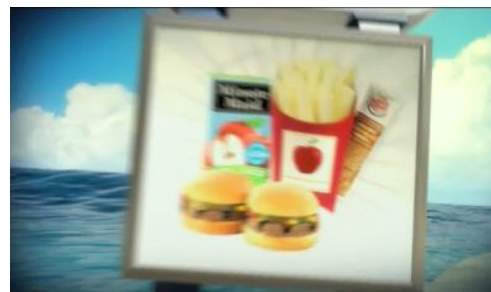
<sup>19</sup> The Children's Advertising Review Unit (CARU) has long had Guidelines for children's advertisers to ensure that children's advertising is not deceptive, unfair or inappropriate for its intended audience. CARU and CFBAI are complementary programs. While CFBAI focuses on WHAT foods are advertised to children, CARU focuses on HOW products, including foods, are advertised to children. For more information regarding CARU, see the CARU Comment filed in the initial proceeding.

**Figure 1: Burger King Corp. 2004 Kids Meal (pre-CFBAI)**



In 2006, the advertised meal offered more options and included some food groups that are recommended for increased consumption – fruit and low-fat dairy. Under the CFBAI, all BKC Kids Meals now advertised to children meet strict nutritional criteria. The meal depicted in Figure 2, one of four currently permitted under its pledge, is only 390 calories (well under its limit of 560), has less than 25% fat, and 470 mg sodium. It provides two full servings of fruit (one through sliced apples and the other through 100% fruit juice), 17% of the Daily Value (“DV”) of calcium and 18% DV of potassium (both nutrients that are shortfalls in children’s diets, or “shortfall nutrients”).

**Figure 2: Burger King Corp. 2009 Kids Meal (CFBAI)**



As seen in Figure 3, McDonald’s original 1979 meal featured fries and a soda and contained 630 calories. Now one of the advertised Happy Meal contains only 395 calories (the hamburger Happy Meal contains 455 calories), and features sliced apples and low-fat milk, thus providing two food groups recommended for increased consumption (fruit and low-fat dairy).

### Figure 3: Changes in McDonald's Advertising

1979 – 630 Calories



2009 – 395 Calories



The changes in quick-serve restaurant advertising by CFBAI participants is noteworthy, particularly in light of the frequent criticism of fast-food advertisements, and statements such as “there was very limited advertising of “go” food and beverage products, such as vegetables and fruits <sup>20</sup> or “[i]t would require 10 hours of viewing children’s television programs to find one healthy food ad.”<sup>21</sup> Generalizations such as these, often based on pre-CFBAI data,<sup>22</sup> fail to recognize, for example, that both Burger King Corp. and McDonald’s advertising to children now always feature their approved kids meals, which include “Go” foods such as apples,<sup>23</sup> 100% fruit juice fortified with calcium, or low or fat-free milk.

The “Go, Slow, Whoa” system and other criticisms simply do not “count” the apples, low-fat or skim milk, or calcium-fortified fruit juices depicted in BKC and McDonald’s (or other participants’) advertising, thus presenting an inaccurate picture of the actual foods advertised by CFBAI participants. BKC’s and McDonald’s advertising are just two examples of healthier food advertising as a result of industry participation in the CFBAI.<sup>24</sup>

<sup>20</sup> FMC Comment at 9, applying the Children Now “Go, Slow, Whoa” categories. Similarly, the Rudd Center Comment asserts that “there is little evidence that marketing of healthy foods to children has increased as a result of CFBAI.” Rudd Center Comment at 3.

<sup>21</sup> Children Now Study at 6.

<sup>22</sup> For example, the Rudd Center Comment cites a study that links exposure to fast food advertising with higher BMI among children, Rudd Center Comment at 2, n. 24. This study is based on pre-CFBAI advertising and does not reflect the positive changes in the advertising practices of BKC and McDonald’s. See also Moore and Rideout, “The online marketing of food to children: Is it just fun and games?” 26 J. of Public Policy and Marketing (2007) (pre-CFBAI).

<sup>23</sup> Indeed, more than 100 million orders of Apple Dippers have been purchased in Happy Meals since January 2008.

<sup>24</sup> Section II.B below provides additional examples of healthier foods included in CFBAI participant advertising.



## 2. Changes in soups

Pastas and soups also have seen reductions in sodium, total fat and sugar. Figure 4 shows an example of the significant sodium reduction in a popular soup that Campbell advertises to kids. Sodium has been reduced 31% from pre-2007 (i.e., pre-CFBAI), and 25% from July 2007 to 2010, with a total 49% sodium reduction from pre-2007 to 2010. Overall, Campbell has reduced the sodium in its soups advertised to kids to the “healthy” level for individual foods under FDA’s definition of the term.

**Figure 4: Changes in Campbell Soup’s Chicken and Stars Soup**

### Pre-2007 Pledge

Nutrition Facts		Amount/serving	%DV*	Amount/serving	%DV*
Serv. Size 1/2 cup (120mL) condensed soup		Total Fat 2g	3%	Total Carb. 10g	3%
Servings about 2.5		Sat. Fat 0.5g	3%	Fiber 1g	4%
Calories 70		Trans. Fat 0g		Sugars 2g	
Fat Cal. 20		Cholest. 5mg	2%	Protein 3g	
		<b>Sodium 940mg</b>	<b>39%</b>		
*Percent Daily Values (DV) are based on a 2,000 calorie diet. Vitamin A 10% • Vitamin C 0% • Calcium 0% • Iron 0%					

### July 2007

31% Reduction from Pre-2007

Nutrition Facts		Amount/serving	%DV*	Amount/serving	%DV*
Serv. size 1/2 cup (120 mL) condensed soup		Total Fat 2g	3%	Potassium 90mg	3%
Servings about 2.5		Sat. Fat 0.5g	3%	Total Carb. 10g	3%
Calories 70		Trans Fat 0g		Fiber 1g	4%
Fat Cal. 20		Cholest. 5mg	2%	Sugars 1g	
		<b>Sodium 640mg</b>	<b>27%</b>	Protein 3g	
*Percent Daily Values (DV) are based on a 2,000 calorie diet. Vitamin A 15% • Vitamin C 0% • Calcium 0% • Iron 2%					

### Current Formulation

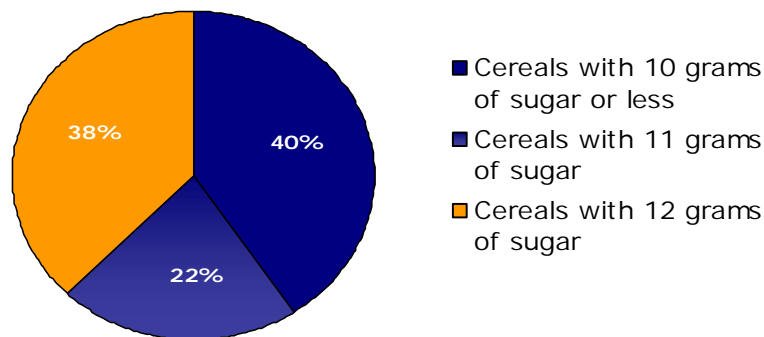
49% Reduction from Pre-2007

Nutrition Facts		Amount Per Serving	% DV *	Amount Per Serving	% DV *
Serving Size: 1/2 cup (120 ml) condensed soup		Total Fat 2g	3%	<b>Sodium 480mg</b>	20%
Servings: about 2.5		Sat. Fat 0.5g	3%	Potassium 90mg	16%
Calories 70		Trans Fat 0g		Total Carb. 11g	4%
Fat Cal. 20		Polyunsat. Fat 0.5g		Fiber 1g	4%
		Monounsatur. Fat 1g		Sugars 1g	
		Cholest. 5mg	2%	Protein 3g	
* Percent Daily Values (DV) are based on a 2,000 calorie diet. Vitamin A 15% • Vitamin C 0% • Calcium 0% • Iron 2%					

### 3. Changes in the cereal category<sup>25</sup>

The cereal category also has undergone significant changes, contrary to the assertions of some.<sup>26</sup> Before CFBAI was launched some cereals advertised to children had as much as 16 grams of sugar per serving. Under commitments made in the program, many cereals have been significantly reformulated. All cereals in the program now contain no more than 12 grams of sugar per serving, and many -- almost two-thirds -- contain 11 grams or less. In fact, there are more cereals with  $\leq 10$  grams of sugar per serving than there are cereals with 12 grams of sugar per serving.

**Figure 5: Sugar Content of Cereals Covered by the CFBAI**



In addition, cereals provide important nutrients. The vast majority are a “good” (10% DV) source of Vitamin D, which is important for bone health, and a “good” to “excellent” (20% DV) source of essential vitamins and minerals. More than half provide 8 grams or more of whole grains per serving, and virtually all meet FDA’s definition for “healthy.” Thus the statement that cereals are “nutrient-poor foods”<sup>27</sup> is simply wrong. Moreover, further positive changes in the cereal category are planned. For example, General Mills announced in December 2009 that it would further reduce the sugar content of advertised kids’ cereals to single digits.

#### **B. CFBAI products provide shortfall nutrients and food groups to be encouraged**

The discussion above highlights how commitments under the CFBAI have resulted in *reductions* in sugars, total fat and sodium. We also want to point out that, as a result

<sup>25</sup> For more information on the nutritional profile of cereals in the CFBAI program as of December 2009, see <http://cms-admin.bbb.org/storage/0/Shared%20Documents/Cereal%20Facts%20Handout.pdf>.

<sup>26</sup> FMC Comment at 8, Rudd Center Comment at 1 and 3.

<sup>27</sup> Rudd Center Comment at 3.

of nutrition standards used by CFBAI participants, foods advertised to children also are *providing* important nutrients and food groups. In March 2009, as part of a project to assess compliance with participants' pledges and to take an informal snapshot of the nutritional profile of participant products advertised on television, we reviewed 54 hours of children's programming.<sup>28</sup> Our review showed full compliance with participant pledges—that is, all the advertised products met participant limits on calories, fats, sugars, sodium and other requirements, if any. We also analyzed the participants' advertised products to determine whether they provided a "good" source of shortfall nutrients in children's diets or provided at least a half-serving of a food group recommended for increased consumption.

As seen in Figure 6 below, our analysis showed that, in addition to meeting their pledge nutrition standards, 83% of the advertising for participants' child-directed<sup>29</sup> food and beverage products in the sample<sup>30</sup> and 67% of the products<sup>31</sup> provided at least a "good" source of one or more shortfall nutrients (Vitamin E, calcium, magnesium, potassium, and fiber), or provided at least a half-serving of fruit, vegetables, low-fat dairy, or eight grams of whole grains (i.e., food groups the 2005 Dietary Guidelines for Americans recommend for increased consumption).<sup>32</sup>

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<sup>28</sup> The programming data was collected from March 12, 2009 through March 18, 2009 on Nickelodeon, Cartoon Network, and ToonDisney during popular children's viewing times.

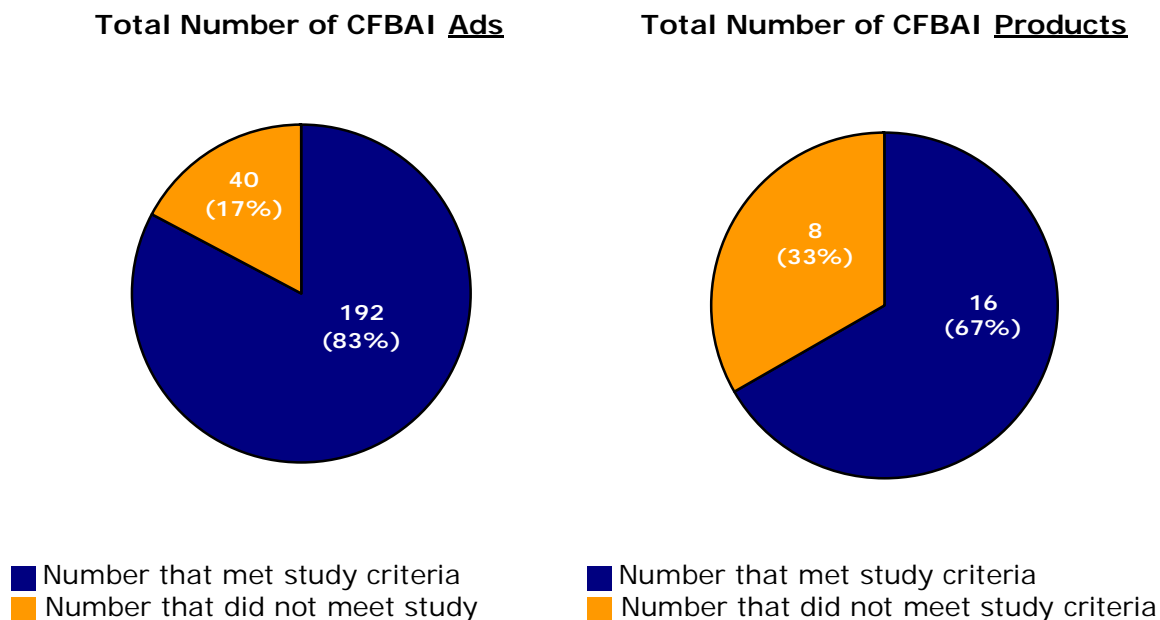
<sup>29</sup> For the purpose of this study we excluded one participant's adult-directed product that was permissible under its pledge.

<sup>30</sup> One of the products included in this analysis did not meet the participant's nutrition guidelines but was from a brand that was scheduled to be incorporated into the participant's pledge commitments in June 2009. Because it was permissible for the product to be advertised at the time we conducted our analysis we included it as a compliant ad. The product is a good source of fiber and provides a full serving of vegetables. As of June 2009, the participant ceased advertising this product consistent with that participant's pledge commitments because the product currently does not meet its nutrition criteria.

<sup>31</sup> Some products were advertised multiple times so the number of ads is higher than the number of products advertised.

<sup>32</sup> HHS and U.S. Department of Agriculture, *Dietary Guidelines for Americans 2005* at pages 5 and 6, available at [www.healthierus.gov/dietaryguidelines](http://www.healthierus.gov/dietaryguidelines). See also what constitutes a serving of whole grains at <http://www.wholegrainscouncil.org/whole-grains-101/what-counts-as-a-serving>.

**Figure 6: Analysis of Advertising During 54 Hours of Children’s Programming: CFBAI Participant Child-Directed Ads/Products That Provide at Least a Good Source of a Nutrient Shortfall for Children or a Food Group to be Encouraged**



Specifically, our study found that 35% of participant ads were for products or meals that included at least 8 grams of whole grains; 28% of participant ads included apples and milk, 12% of participant ads featured or included low-fat yogurt products; and 7% were for products that included at least a half serving of vegetables.<sup>33</sup> In light of the positive nutrients and food groups reflected in our advertising sample, we strongly disagree that 10 hours of children’s television viewing is needed to find one healthy product.

### **III. Public Service Announcement and Media Literacy Campaigns**

We support the Commission’s overarching goal of gathering information to help empower parents in the evolving media landscape. We believe that parents and society in general need all available tools to address concerns about this landscape and its relationship to issues such as childhood obesity. For this reason, we believe that media literacy, nutrition education, marketing of healthy foods and parental mediation can complement other efforts in combating childhood obesity.<sup>34</sup>

<sup>33</sup> CFBAI participant products that did not meet the study criteria generally contained other positive nutritional benefits such as containing 10% DV of other essential vitamins and minerals, or whole grains, but less than the eight grams we used in our review

<sup>34</sup> We thus disagree with the Rudd Center Comment’s negative assessment of these types of efforts. See Rudd Center Comment at 2-3. IOM also recommended multiple strategies for addressing childhood obesity, including media and entertainment industry initiatives, government and private sector marketing

Federal and state governments, as well as private and non-profit organizations, currently use exactly these educational tools as important components of a multi-pronged approach to the problem of childhood obesity. For example, First Lady Michelle Obama's *Let's Move!* initiative, a four-part campaign to fight childhood obesity, includes a parent education/public service announcements (PSAs) component.<sup>35</sup> The Let's Move! PSAs are a continuation of the Ad Council and HHS' Childhood Obesity Prevention campaign that first launched in 2005 and the Ad Council's Coalition for Healthy Children Initiative, which encourages marketers and the media to adopt consistent healthy lifestyle messages.<sup>36</sup> As with the Ad Council's campaigns, the Let's Move! PSAs will run and air in advertising time and space that is donated by the media. We also note that the Federal Trade Commission is conducting an advertising literacy campaign focused on kids 8-12.<sup>37</sup> The variety of these messaging campaigns and their proponents suggests that these efforts will be crucial in reducing childhood obesity.

#### **IV. Conclusion**

The CFBAI and its participants have worked hard to improve the nutritional profile of foods advertised to children under 12, and we are proud of the progress that has been achieved in a relatively short amount of time. We note that even critics of the CFBAI have urged the program to continue its efforts and expand its membership.<sup>38</sup> In addition, recent studies of food advertising to kids have generally given "better grades" to advertising by CFBAI participants than to non-participants.<sup>39</sup> Our work, however, is not done. Our intent always has been for the Initiative to be a dynamic program that would evolve over time. As we noted in our initial comment, one of our

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and educational efforts directed at parents, caregivers and families, as well as educational efforts in schools. See "Food Marketing to Children and Youth" at 384-85.

<sup>35</sup> More information is available at [www.letsmove.gov](http://www.letsmove.gov). BBB supports the First Lady Initiative and has offered to run campaign PSAs on its website, which has a large consumer reach, to help with dissemination of these important messages.

<sup>36</sup> Additional information on the Ad Council's successful ad campaigns is available at [www.adcouncil.org/news](http://www.adcouncil.org/news). The Ad Council has reported that more than 1 in every 3 children between the ages of 6 to 12 years has reported recognizing the campaign. In 2009, children said they cared more about getting enough physical activity than they did prior to the launch of the campaign's first round of PSAs in 2005 (68% vs. 55% in 2005). See Ad Council Press Release, "New Public Service Ads are Part of First Lady Michelle Obama's Let's Move! Initiative to Combat Childhood Obesity," Feb. 9, 2010.

<sup>37</sup> The FTC's multi-media campaign is based on [admongo.gov](http://admongo.gov), which teaches ad literacy concepts through game play. Other elements of the campaign include in-school curricula, sample ads that can be used at home or in the classroom, and teacher training videos.

<sup>38</sup> See FMC Comment at 10-11.

<sup>39</sup> See "Better-For-Who?" CSPI (Nov. 2009); "Food Marketing Report Card," CSPI (March 2010); Children Now Study at 27-28.

next steps includes conducting a Nutrition Science Review, to be held later this year, to consider the Interagency Working Group report,<sup>40</sup> the Institute of Medicine's report on sodium, which is expected to be released soon,<sup>41</sup> and the revised Dietary Guidelines for Americans, expected in fall 2010.

We appreciate the efforts of the Commission to continue to examine how to empower parents and protect children in the evolving media landscape. We urge the Commission to consider the information provided in our initial and rebuttal comments in considering the effectiveness of the CFBAI and our voluntary efforts to change the landscape of food advertising to children. We would be pleased to answer any questions that you might have about the CFBAI and to provide further information upon request. Our contact information is below.

Respectfully submitted,



Maureen Enright  
Assistant Director, CFBAI  
Email: [menright@council.bbb.org](mailto:menright@council.bbb.org)  
Phone: 703-247-9319



Elaine D. Kolish  
Vice President and Director, CFBAI  
Email: [ekolish@council.bbb.org](mailto:ekolish@council.bbb.org)  
Phone: 703-247-9382

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<sup>40</sup> Under HR 1105, Congress charged the FTC, CDC, FDA, and USDA, with developing recommendations regarding standards for the marketing of food to children under 18 and providing them in a report to Congress by July 2010. Publication of the IWG's proposed standards for comment is expected shortly.

<sup>41</sup> The IOM's Food and Nutrition Board convened an ad hoc consensus committee to review and make recommendations about how American can reduce sodium intake. More information is available at [www.iom.edu/Activities/Nutrition/ReduceSodiumStrat.aspx](http://www.iom.edu/Activities/Nutrition/ReduceSodiumStrat.aspx).